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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,124	07/12/2001	DuWayne C. Radke	56908US002	1697

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EXAMINER

GREEN, CHRISTY MARIE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/904,124	Applicant(s) RADKE ET AL.	
	Examiner Christy M Green	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>9</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a second office action for serial number 09/904124, entitled Pass-Through Fire Stop Device, filed on July 12, 2001.

Response to Amendment

In response to the examiner's office action dated September 9, 2002, the applicant has amended claim 1. The indicated allowability of claim 2 is withdrawn in view of the newly discovered reference(s) to Rodriguez. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munzenberger et al., US patent # 6,161,393 in view of Rodriguez, US Patent 5,588,267.

Munzenberger discloses the claimed invention including a firestop device (figure 2) comprising a housing (7), firestop material (11) arranged within the housing; the housing comprising a base portion (3) and a riser portion (7), the base portion including a recess (where 11 points to); the base portion includes a sidewall portion (where 3 points to) extending from a first open end (10) towards the riser portion (7), and a shoulder portion (2) extending inwardly from the sidewall portion to the riser portion (7);

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the sidewall (3) and shoulder (2) portions include inner surfaces having a rib (15); the housing has a first and second opposed open ends (10 and the opposite side of 10) and a hollow chamber (where 12 is located) having a longitudinal axis extending from the first open end to the second open end (figure 2); the first open end (10) is provided in the base portion (where 3 points to) and the second open end is provided in the riser portion (7), the firestop material (11) being provided in spaced relation (by 13) along the sidewall portion inner surface from the first open end to the shoulder portion (figure 2); the housing has a two-tiered cylindrical shape (figure 2) the base portion (3) having a larger diameter than the riser portion (7); the base portion further includes a flange (4) adjacent the first open end (10); the riser portion (7) includes a plurality of equally segmented transverse bands (8) each including manually engageable pull tab (where 8 points to); a cap (9) attached to the riser portion (7); the cap contains snap connectors (see attached figure 2) that snap onto the riser portion; a retaining ring (4) arranged within the base portion first open end adjacent the firestop material.

Munzenberger does not disclose the housing including at least one frangible connection defining a removable band. Rodriguez teaches that it is known in the art to provide at least one frangible connection (20) defining a removable band (where 5 points to); and a pull tab (25) providing a grasping means (column 4, lines 28-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frangible connection of the housing and the pull tab to grasp the band of Rodriguez with the housing of the firestop device of Munzenberger in order

to provide different lengths of the housing for different sized walls (column 1, lines 35-37).

In regards to claims 11 and 14, Munzenberger in view of Zajac discloses the claimed invention as stated above in claim 1, except for the pull tabs includes indicia indicating the length of the device and an extension member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide indicia on the pull tabs indicating the length of the device and an extension member since indicia indicating the length of a device (such as used in a ruler) and an extension member which can be attached to extend the housing/riser portion is well known in the art.

Response to Arguments

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



March 7, 2003



Carl D. Friedman
Supervisory Patent Examiner
Group 3600

